REMARKS

The present Response is filed in reply to the Official Action of October 12, 2004.

Claims 1 through 8 are presently pending in the Application and the Examiner rejected claims 1 through 8 under 35 U.S.C. 102 and 35 U.S.C. 103 over prior art cited by the Examiner.

First considering the present invention as recited in the claims as amended herein above, the present invention is directed to a method and apparatus for controllably distributing music or image data, such as songs or movie clips, wherein the music or image data is combined with an advertising message so that the advertising message is played each time the music or image data is played by the recipient. The advertising message may comprise, for example, of a music clip, a spoken message, or an advertising image such as a movie clip or the equivalent of a television advertisement, and can appear before or after or overlapping the start or finish of the music or image data.

According to the present invention, the advertising message is combined with the music or image data so that the advertising message is effectively embedded in, that is, is made part of, the music or image data such that the advertising message cannot be separated from the music or image data by the recipient except under specific conditions controlled by the distributor. For example, the combination of the music of image data and the advertising message can further include a control program that counts the number of times the music or image data is played with the advertising message and that removes the advertising message after the advertising message has been played a certain number of times. In further example, the original recipient of the combined music or image data and advertising message can transmit the music or image data to a subsequent recipient, but the music or image data will be transmitted in combination with the advertising message so that the advertising message is played each time the subsequent recipient plays the music or image data, and so on.

Next considering the specific rejections of the claims, the Examiner rejected claims 1, 2, 4 and 8 under 35 U.S.C. § 102(e) as unpatentable over Hunter `417. In this regard, the Examiner holds that Hunter `417 discloses music distribution systems that advertise

promotional music to customers when music is distributed on line, as shown in Fig. 13 of Hunter `417. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

The Applicant respectfully disagrees with the Examiner's interpretation of the teachings of Hunter `417, not because the Examiner's characterization of Hunter `417 is in itself incorrect but because the characterization of Hunter `417 is incomplete in that it does not consider or include the very fundamental distinctions between Hunter `417 and the present invention as recited in the claims.

That is, and for example, such as described in and in association with Fig. 13, Hunter `417 describes a system wherein music that is to be promoted by a distributor, such as a record label, is packaged together with an advertisement or message and transmitted to potential buyers of the promotional music. The package containing the music and advertisement or message is received and stored in temporary storage in the recipient system and the arrival of the music is announced to the recipient by playing the advertisement or by displaying the message, which is of the nature "You've got new tunes". The recipient may then play the music and, if the recipient elects to purchase the music, the music is stored in the recipient's system in permanent storage, such as on hard disk or in a CD or DVD, and the advertising or message is discarded from temporary storage. If the recipient elects not to purchase the music, the music and advertisement or message are deleted from temporary storage.

It will therefore be apparent that when Hunter `417 is studied at a greater level of detail, there are very fundamental differences between Hunter `417 and the system of the present invention. For example, it is apparent in the Hunter `417 system that while the music and the advertisement or message are packaged together for purposes of delivery to a recipient, the music and advertisement or message are separate and independent from one another in the package and remain so in the recipient's system.

In this regard, it must be noted that Hunter `417 does not describe of suggest that the music and advertisement or message are anything but separate and independent elements

within the package, and are placed together in a package only for convenience in transmission and delivery. In addition, and even more clearly, it must be noted that the advertisement or message is presented to the recipient independently and separately from the music to inform the recipient that the music is available. There is no suggestion or teaching in Hunter `417 that the advertisement or message must be played with the music and, in fact, the advertisement or message must be separate and independent from the music in order to be presented to the recipient separately from the playing of the music. In a like manner, and according to the description of the Hunter `417 system, the recipient is able to and does play the music independently and separately from the advertisement or message.

In this very fundamental respect, therefore, the system of the present invention is completely and patentably distinguished over and from the teachings of Hunter `417. That is, in Hunter `417 the promotional music is separate and independent from the advertisement or message and may be played separately from the advertisement or message. In the system of the present invention, however, and in complete contrast to Hunter `417, the advertisement is embedded in or otherwise combined with the music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 1 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 102, and under the requirement and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim 1 under 35 U.S.C. 102 over Hunter `417, and any potential rejection under 35 U.S.C. 103, and allow claim 1 as amended herein above.

In this regard, it will be noted that the Applicant amended claim 1 herein above to more explicitly and clearly point out and recite the above discussed invention.

Continuing with the discussion of claims 2, 4 and 8, it must be further noted that claims 2, 4 and 8 are all dependent from claim 1 and therefore incorporate a recitations and limitations of claim 1 by dependency, with claims 2, 4 and 8 serving to add further recitations and limitations to the recitations and limitations of claim 1. It is the belief and position of the Applicant that claims 2, 4 and 8 and fully and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 102, and under the requirements and provisions of 35 U.S.C. 103, for the same reasons that claim 1 is patentably distinguished over and from the teachings of Hunter `417. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 2, 4 and 8 over Hunter `417 under 35 U.S.C. 102, and any potential rejection under 35 U.S.C. 103, and allow claims 2, 4 and 8 as amended herein above.

Next, the Examiner rejects claims 1, 2 and 4 under 35 U.S.C. § 102(e) as unpatentable over Parrella `764. Again, The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

Parrella `764 describes a system for selectively broadcasting programs comprised of music, videos and advertisements to user broadcast stations wherein the mix of music, videos and advertisements transmitted to each broadcast station is selected and controlled from a central controller according to demographic data stored in a demographic database.

In the Parrella `764 system, as in the Hunter `417 system and in basic contrast from the system of the present invention, the music or videos are not bound together in any way with the advertisements but are separate and independent entities. In fact, the music or videos and the advertisements are even more weakly associated with one another than in the Hunter `417 system because in the Parrella `764 system the music, videos and advertisements are transmitted to the broadcast systems separately independently from each other and are not even packaged together for purposes of transmission. In particular, the only control over which music, videos and advertisements appear at each broadcast station is exercised at the central

controller, which determines which music, videos and advertisements are sent to each broadcast station and in what sequence they are sent.

As a consequence, there is no mechanism in the Parrella `764 system operating at the music or video file level that relates or binds a given advertisement to a given music or video file so that the advertisement is played each time the music or video file is played. Instead, and as described, the relationship between a music or video file and an advertisement is determined solely on a per broadcast station bases and solely by the central controller and any relationship between an advertisement and a music or video file is completely external to and independent from the advertisements and the music and video files. That is, the Parrella `764 system does not include any mechanism to link an advertisement directly to, for example, a music file, and the only way that an advertisement may be related to a music file is by operation of the central controller in determining the sequence in which the files are transmitted to the various broadcast stations.

It should also be noted that in the Parrella `764 system, and because there is no direct link, much less an embedding type link, between an advertisement file and a music or video file, the music or video files are readily and easily separated from the advertisement files.

In the system of the present invention, and in complete contrast to both Parrella `764 system and Hunter `417, the advertisement is embedded in or otherwise combined with the music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot separate the advertisement from the music or image data and cannot play the music or image data separately from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 1 as amended herein above is completely and patentably distinguished over and from the teachings of both Parrella `764 and Hunter `417 under the requirements and provisions of 35 U.S.C. 102, and under the requirement and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim

1 under 35 U.S.C. 102 over Parrella `764, and any potential rejection under 35 U.S.C. 103, and allow claim 1 as amended herein above.

It must be further noted that claims 2 and 4 are all dependent from claim 1 and therefore incorporate a recitations and limitations of claim 1 by dependency, with claims 2 and 4 serving to add further recitations and limitations to the recitations and limitations of claim 1. It is the belief and position of the Applicant that claims 2 and 4 are fully and patentably distinguished over and from the teachings of Parrella `764 under the requirements and provisions of 35 U.S.C. 102, and under the requirements and provisions of 35 U.S.C. 103, for the same reasons that claim 1 is patentably distinguished over and from the teachings of Parrella `764. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 2 and 4 over Parrella `764 under 35 U.S.C. 102, and any potential rejection under 35 U.S.C. 103, and allow claims 2 and 4 as amended herein above.

Next, the Examiner has rejected claims 1 through 4 under 35 U.S.C. § 102(e) as unpatentable over Fenner `328. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

Fenner `328 describes a recording media storage and player unit capable of storing and playing a plurality of disks or equivalent devices. According to Fenner `328, the media storage and player unit further include a local database and a network connection to an external database that stores information relating to the disks stored in the player device, such as track information, liner notes, information regarding related music, and advertisements for music. The player unit notes which disks are stored therein and commands the local database to go out to the remote database and download the available information related to each of the disks stored in the unit. Thereafter, the user may elect to view the downloaded information when playing or preparing to play a disk.

It is therefore apparent that in Fenner `328, as in the case of Parrella `764 and Hunter `417, the advertisement files are not bound to or embedded in or with the music files in any way, but are separate and independent from the music files so that the music files can be

accessed and played without playing the advertisements. It should also be noted, however, that in the case of Fenner `328 the association between the music files and the advertisements is even more distant and "looser" than in Parrella `764 and Hunter `417.

That is, in Hunter `417 the music files are downloaded in the same package as the advertisement files, although the advertisement files are not otherwise linked to the music files but are completely separate and independent from the music files and the music files can be accessed and played independent of the advertisements. In Parrella `764, relationship between the music and advertisement files is even more distant in that the advertisement files and completely separate and independent from the music files and the files are associated only by selection of the sequence in which they are transmitted to the broadcast stations by the central controller; in all other respects the music or video files are played independently of the advertisements.

In Fenner `328, the music files are installed in the player unit and the advertisements are downloaded to a local database separately and independently from a completely separate source, that is, from the network database, and are related to the disks rather than to the music files themselves. Even after the advertisements are downloaded into the local database, there is no coupling or tie between a music file and an advertisement, but only between a disk and an advertisement. In addition, the user can elect to view the advertisement or not to view the advertisement; that is, an advertisement is not automatically displayed or played when a music file or even a disk is played.

As in the cases of Parrella `764 and Hunter `417, therefore, Fenner `328 does not teach or suggest the present invention of embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 1 as amended herein above is completely and patentably distinguished over and from

the teachings of Fenner `328 under the requirements and provisions of 35 U.S.C. 102, and under the requirement and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim 1 under 35 U.S.C. 102 over Fenner `328, and any potential rejection under 35 U.S.C. 103, and allow claim 1 as amended herein above.

It must be further noted that claims 2 through 4 are all dependent from claim 1 and therefore incorporate a recitations and limitations of claim 1 by dependency, with claims 2 through 4 serving to add further recitations and limitations to the recitations and limitations of claim 1. It is the belief and position of the Applicant that claims 2 through 4 are fully and patentably distinguished over and from the teachings of Fenner `328 under the requirements and provisions of 35 U.S.C. 102, and under the requirements and provisions of 35 U.S.C. 103, for the same reasons that claim 1 is patentably distinguished over and from the teachings of Fenner `328. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 2 through 4 over Fenner `328 under 35 U.S.C. 102, and any potential rejection under 35 U.S.C. 103, and allow claims 2 through 4 as amended herein above.

Next, the Examiner has rejected claim 3 under 35 U.S.C. § 103(a) as unpatentable over Parrella `764 in view of Fenner `328. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

First, claim 3 is dependent from claim 1 and thereby adds to the recitations of claim 1 the further recitations that the advertising message or image overlaps either or both of the first and last parts of the music data or the image data. For this reason, however, claim 3 incorporates all of the recitations and limitations of claim 1, including the recitations pertaining to the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the music or image data cannot be separated from or played separately from the advertisement by the recipient.

As discussed in detail herein above, neither Parrella `764 nor Fenner `328 teaches or even suggests the present invention, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement. For this reason, that is, that neither reference teaches or even suggests this aspect of the present invention, the combination of Parrella `764 in view of Fenner `328 cannot and does not teach or suggest this aspect of the present invention. That is, the combination of Parrella `764 in view of Fenner `328 cannot and does not teach or suggest the present invention of embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 3 as amended herein above is completely and patentably distinguished over and from the teachings of Parrella `764 in view of Fenner `328 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim 3 under 35 U.S.C. 103 over Parrella `764 in view of Fenner `328, and allow claim 3 as amended herein above.

In addition, and as described above, claim 3 adds to the recitations of claim 1 the further recitation that the advertising message or image overlaps either or both of the first and last parts of the music data or the image data. This aspect of the present invention requires that the advertisement and the music or image data be coupled, linked or embedded in a manner so that (a) the advertisement is played when the music or image data is played, and (b) that the relationship between the advertisement and the music or image data be fixed so that the advertisement overlaps either or both of the first or last parts of the music or image data.

As discussed in detail herein above, however, Parrella `764 teaches a system wherein the relationship between the music or image files and the advertisement files is such that the advertisement files and completely separate and independent from the music and image files. The music or image files and the advertisement files are associated or related only by selection of the sequence in which they are transmitted to the broadcast stations by the central controller; in all other respects the music or video files are played independently of the advertisements.

For these reasons, therefore, it is apparent that the Parrella `764 system does not contain any teaching or suggestion of a mechanism or file relationship that would cause an advertisement to be played each time a music or image file is played, much less any form of mechanism of file relationship that would further insure that the advertisement would overlap the start or finish or both of the music or image.

In Fenner `328, the advertisements are downloaded to a local database separately and independently from the music files and are related to the disks rather than to the music files themselves and there is no coupling or tie between a music file and an advertisement, but only between a disk and an advertisement. In addition, an advertisement is not automatically displayed or played when a music file or even a disk is played; instead, the user can elect to view the advertisement or not to view the advertisement.

For these reasons, therefore, it is apparent that the Fenner `328 system does not contain any teaching or suggestion of a mechanism or file relationship that would cause an advertisement to be played each time a music or image file is played, much less any form of mechanism of file relationship that would further insure that the advertisement would overlap the start or finish or both of the music or image.

It is therefore again the belief and position of the Applicant that the present invention as recited in claim 3 as amended herein above is completely and patentably distinguished over and from the teachings of Parrella `764 in view of Fenner `328 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore again respectfully requests that the

Examiner reconsider and withdraw the rejection of claim 3 under 35 U.S.C. 103 over Parrella `764 in view of Fenner `328, and allow claim 3 as amended herein above.

The Examiner further rejects claim 3 under 35 U.S.C. § 103(a) as unpatentable over Hunter `417 in view of Fenner `328. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

As discussed above, claim 3 is dependent from claim 1 and thereby adds to the recitations of claim 1 the further recitations that the advertising message or image overlaps either or both of the first and last parts of the music data or the image data. For this reason, however, claim 3 incorporates all of the recitations and limitations of claim 1, including the recitations pertaining to the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

As discussed in detail herein above, neither Hunter `417 nor Fenner `328 teaches or even suggests the present invention, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement. For this reason, that is, that neither reference teaches or even suggests this aspect of the present invention, the combination of Hunter `417 in view of Fenner `328 cannot and does not teach or suggest this aspect of the present invention. That is, the combination of Hunter `417 in view of Fenner `328 cannot and does not teach or suggest the present invention of embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 3 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 in view of Fenner `328 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim 3 under 35 U.S.C. 103 over Hunter `417 in view of Fenner `328, and allow claim 3 as amended herein above.

In addition, and considering the recitations of claim 3 alone, claim 3 adds to the recitations of claim 1 the further recitation that the advertising message or image overlaps either or both of the first and last parts of the music data or the image data. This aspect of the present invention requires that the advertisement and the music or image data be coupled, linked or embedded in a manner so that (a) the advertisement is played when the music or image data is played, and (b) that the relationship between the advertisement and the music or image data be fixed so that the advertisement overlaps either or both of the first or last parts of the music or image data.

In contrast from the present invention, Hunter `417 teaches a system wherein the music files are downloaded in the same package as the advertisement files but wherein the advertisement files are not otherwise linked to the music files but are completely separate and independent from the music files and wherein, as a consequence, the music files can be accessed and played independent of the advertisements.

For these reasons, therefore, it is apparent that the Hunter `417 system does not contain any teaching or suggestion of a mechanism or file relationship that would cause an advertisement to be played each time a music or image file is played, much less any form of mechanism of file relationship that would further insure that the advertisement would overlap the start or finish or both of the music or image.

Also in contrast from the present invention, Fenner `328 teaches a system wherein the advertisements are downloaded to a local database separately and independently from the music files and are related to the disks rather than to the music files themselves and there is

no coupling or tie between a music file and an advertisement, but only between a disk and an advertisement. In addition, an advertisement is not automatically displayed or played when a music file or even a disk is played; instead, the user can elect to view the advertisement or not to view the advertisement.

For these reasons, therefore, it is apparent that the Fenner `328 system does not contain any teaching or suggestion of a mechanism or file relationship that would cause an advertisement to be played each time a music or image file is played, much less any form of mechanism of file relationship that would further insure that the advertisement would overlap the start or finish or both of the music or image.

It is therefore again the belief and position of the Applicant that the present invention as recited in claim 3 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 in view of Fenner `328 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore again respectfully requests that the Examiner reconsider and withdraw the rejection of claim 3 under 35 U.S.C. 103 over Hunter `417 in view of Fenner `328, and allow claim 3 as amended herein above.

Next, the Examiner rejects claim 5 under 35 U.S.C. § 103(a) as unpatentable over Hunter `417. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

First, claim 5 is dependent from claim 4 which is dependent from claim 1, so that claim 4 incorporates all recitations and limitations of claim 1 and claim 5 incorporates all recitations and limitations of both claim 4 and claim 1. In this regard, it should be noted that the Applicant has amended both claim 4 and claim 5 herein above to more explicitly and clearly point out and recite this aspect of the invention, and that these amendments have added no new matter to the claims and have not altered or extended the scope of the invention or the claims in any way.

That is, claim 1 recites that the advertisement cannot be separated from the music or image data by the recipient while claim 4, for example, has been accordingly amended to recite that the advertisement can be separated from the music or image data by an executable file

included with the advertisement and music or image data wherein the executable file is inaccessible to the recipient. Claim 4 is thereby clarified to be clearly in accordance with the limitation of claim 1 that the recipient cannot separate the advertisement from the music or image data. In a like manner, claim 5 has been amended to recite that the advertising is automatically separated from the music or image data by the executable file after the music or image data, and thus the advertising, has been played a predetermined number of times.

Now considering the rejection of claim 5 over Hunter `417, as discussed above, claim 5 incorporates all of the recitations and limitations of claims 1 and 4, including the recitations pertaining to the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

As discussed in detail herein above, Hunter `417 does not teach or even suggests the present invention as recited in claim 1 and as thereby recited by incorporation in claim 5, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claim 5 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claim 5 under 35 U.S.C. 103 over Hunter `417, and allow claim 5 as amended herein above.

Considering the recitations of claims 4 and 5 alone, claim 4 adds to the recitations of claim 1 the limitation that the advertisement can be separated from the music or image data by an executable file included with the advertisement and music or image data wherein the

executable file is inaccessible to the recipient and claim 5 adds the limitations that the advertising is automatically separated from the music or image data by the executable file after the music or image data, and thus the advertising, has been played a predetermined number of times.

As discussed in detail herein above, and in fundamental contrast from the present invention, Hunter `417 teaches a system wherein the music files are downloaded in the same package as the advertisement files but wherein the advertisement files are not otherwise linked to the music files but are completely separate and independent from the music files and wherein, as a consequence, the music files can be accessed and played independent of the advertisements.

For these reasons, therefore, it is apparent that the Hunter `417 system does not contain any teaching or suggestion of a mechanism or file relationship that would cause an advertisement to be played each time a music or image file is played, much less any form of mechanism of file relationship that would further insure that the advertisement would overlap the start or finish or both of the music or image.

In addition, and for the above reason, it is apparent that Hunter `417 does not teach or even suggest a system wherein the advertisement can be separated from the music or image data by an executable file included with the advertisement and music or image data wherein the executable file is inaccessible to the recipient and claim 5 adds the limitations that the advertising is automatically separated from the music or image data by the executable file after the music or image data, and thus the advertising, has been played a predetermined number of times.

That is, in the Hunter `417 system the music or image data are always separate from any advertisement, so that there is no need for any mechanism of any form to separate an advertisement from the music or image data and such a mechanism would serve no purpose in the Hunter `417 system.

It is therefore again the belief and position of the Applicant that the present invention as recited in claim 5 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore again respectfully requests that the Examiner reconsider and withdraw the rejection of claim 5 under 35 U.S.C. 103 over Hunter `417, and allow claim 5 as amended herein above.

Next, the Examiner has rejected claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Hunter `417 in view of Ansell `019. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

First, claim 7 is dependent from claim 6, which is dependent from claim 5, which is dependent from claim 4, which is dependent from claim 1.

Claim 6 thereby incorporates all recitations of claims 1, 4 and 5 as amended herein and adds the further limitations that when the music or image data is transferred or copied from one said user terminal to another user terminal, that is, from a first recipient to a second recipient, the music or image data is transferred or copied in combination with the advertisement, that is, as originally received by the first recipient. As such, the second recipient, and any subsequent recipient in a chain of transfers or copies, receives the combined music or image data and advertisement so that any time the music or image data is played by the second or a subsequent recipient, the advertisement is also played. In addition and as discussed herein above in detail, the second or subsequent recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement. In addition, if the first recipient attempts to copy or transfer the music or image data without the advertisement, such as after the executable code has separated the advertisement from the music or image data after the advertisement has been played the required number of times, the copied or transferred version of the music or image data will be unplayable.

Claim 7, in turn, incorporates all recitations of claims 1, 4, 5 and 6 as amended herein and adds the further limitations that the music or image data can be transferred to copied from a first recipient to a second recipient, but that when the music or image data is so copied or transferred, the music or image data will be "locked" and thus unplayable. Claim 7 further recites, however, that the music or image data received by the second recipient can be unlocked and thus played by entering a predetermined password that is transmitted from an advertisement distribution system to the recipient of the transferred or copied music or image data.

Now considering the rejection of claims 6 and 7 over Hunter `417 in view of Ansell `019, as discussed above claims 6 and 7 each incorporate all of the recitations and limitations of claims 1, 4 and 5, including the recitations pertaining to the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

As discussed in detail herein above, Hunter `417 does not teach or even suggests the present invention as recited in claim 1 and as thereby recited by incorporation in claims 6 and 7, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that the present invention as recited in claims 6 and 7 as amended herein above is completely and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 103.

Next considering Ansell `019, Ansell `019 describes a system in which music is distributed by means of secure portable tracks wherein each secure portable track is encrypted

and can be decrypted and played only be means of a key that is specific to a given playback system, so that each secure portable track is "bound" to a single playback system.

Ansell `019 does not, however, teach or even suggests the present invention as recited in claim 1 and as thereby recited by incorporation in claims 6 and 7, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement. The Ansell `019 system instead relies entirely upon encryption of the music data and the use of a decryption key that is completely specific to a single playback system.

As discussed in detail herein above, neither Hunter `417 nor Ansell `019 teaches or even suggests the present invention, that is, the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement. For this reason, that is, that neither reference teaches or even suggests this aspect of the present invention, the combination of Hunter `417 in view of Ansell `019 cannot and does not teach or suggest this aspect of the present invention. That is, the combination of Hunter `417 in view of Ansell `019 cannot and does not teach or suggest the present invention of embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It is therefore the belief and position of the Applicant that claims 6 and 7 are completely and patentably distinguished over and from the teachings of Hunter `417, of Ansell `019 and of Hunter `417 in view of Ansell `019 under the requirements and provisions of 35 U.S.C. 103. The Applicant therefore respectfully requests that the Examiner reconsider and withdraw the

rejection of claims 6 and 7 under 35 U.S.C. 103 over Hunter `417 in view of Ansell `019, and allow claims 6 and 7.

In addition, it has been described above that claim 6 specifically adds to the recitations of claims 1, 4 and 5 the further limitations that when the music or image data is transferred or copied from a first recipient to a second recipient the music or image data is transferred or copied in combination with the advertisement, that is, as originally received by the first recipient. As such, the second recipient and any subsequent recipient in a chain of transfers or copies receives the combined music or image data and advertisement so that any time the music or image data is played by the second or a subsequent recipient, the advertisement is also played. In addition, if the first recipient attempts to copy or transfer the music or image data without the advertisement, such as after the executable code has separated the advertisement from the music or image data after the advertisement has been played the required number of times, the copied or transferred version of the music or image data will be unplayable.

Claim 7 then adds to recitations of claims 1, 4, 5 and 6 the specific recitations that the music or image data can be transferred to copied from a first recipient to a second recipient, but that when the music or image data is so copied or transferred, the music or image data will be "locked" and thus unplayable, and that the music or image data received by the second recipient can be unlocked and thus played by entering a predetermined password that is transmitted from an advertisement distribution center.

Considering the recitations of claims 6 and 7 alone and in light of the teachings of Hunter `417, it has been described in detail herein above that Hunter `417 teaches a system wherein the music files are downloaded in the same package as the advertisement files but wherein the advertisement files are not otherwise linked to the music files but are completely separate and independent from the music files and wherein, as a consequence, the music files can be accessed and played independent of the advertisements.

Hunter `417 does not, however, teach, suggest or even consider the locking or encryption of music of image data, and therefore does not teach, suggest or consider the

providing or any form of decryption key from any source in order to unlock or decrypt the music or image data.

It is therefore again the belief and position of the Applicant that the present invention as recited in claims 6 and 7 is completely and patentably distinguished over and from the teachings of Hunter `417 under the requirements and provisions of 35 U.S.C. 103.

Next considering the teachings of Ansell `019 with respect to the recitations of claims 6 and 7, as described above Ansell `019 describes a system in which music is distributed by means of secure portable tracks wherein each secure portable track is encrypted and can be decrypted and played only be means of a key that is specific to a given playback system, so that each secure portable track is "bound" to a single playback system.

It is therefore apparent that the only commonality between Ansell `019 and the present invention is that both employ encryption and a decryption key to prevent unauthorized access to data, which is in general a well known method of protecting data. The present invention as recited in claims 6 and 7 is fundamentally distinguished over and from the teachings of Ansell `019 for a number of reasons, however. That is, and for example, in Ansell `019 the decryption key is specific and local to a given playback system, and is generated from and in the playback system. In the present invention as recited in claims 6 and 7, and in contrast from Ansell `019, the decryption key is not local and is not specific to a given playback system or recipient, but is instead provided from an advertisement distribution center and is not limited or specific to a given playback system or recipient. The entire orientation, structure and operation of the encryption mechanism employed in the present invention are thereby fundamentally distinct an different from the teachings of Ansell `019.

Further in this regard, and in further distinction from Ansell `019, the mechanism of the present invention as recited in claims 6 and 7 allows music or image data to be copied or transferred to any other recipient, or through a chain of recipients, and allows each subsequent recipient after the original recipient to decrypt and play the music or image data after obtaining the decryption key from the central advertisement distribution center. Stated another way, in

the present invention as recited in claims 6 and 7 the encryption and the decryption key pertains to the music or image data itself independently of the system in which the music or image data currently resides. In Ansell `019, and in complete contrast from the present invention, the encryption and, more importantly, the decryption key, are specific to a single playback unit and to only a single playback unit, so that the decryption mechanism and decryption key effectively pertain to the playback system and not to the music or image data itself.

It is therefore again the belief and position of the Applicant that the present invention as recited in claims 6 and 7 is completely and patentably distinguished over and from the teachings of Ansell `019 under the requirements and provisions of 35 U.S.C. 103.

It is further the belief and position of the Applicant that since neither reference teaches or even suggests this aspect of the present invention, the combination of Hunter `417 in view of Ansell `019 cannot and does not teach or suggest the aspects of the present invention recited in claims 6 and 7. The Applicant therefore again respectfully requests that the Examiner reconsider and withdraw the rejection of claim 6 and 7 under 35 U.S.C. 103 over Hunter `417, over Ansell `019 and over Hunter `417 in view of Ansell `019, and allow claims 6 and 7.

Lastly, the Examiner rejects claims 5-8 under 35 U.S.C. § 103(a) as unpatentable over Parrella `764 or Fenner `328 in view of Hunter `417 in view of Ansell `019. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

Claims 5-8 are each directly or indirectly dependent from claim 1 and thereby incorporate all recitations or limitations of claim 1, with claims 5-8 acting to add further limitations and recitations to the recitations and limitations of claim 1 and to the recitations and limitations of any intervening claims.

In addition, it has been discussed in detail herein that none of Parrella `764, Fenner `328, Hunter `417 or Ansell `019 teach or even suggest the present invention as recited in claim 1 under the requirements and provisions of either or both of 35 U.S.C. 102 or 35 U.S.C. 103. That is, none of Parrella `764, Fenner `328, Hunter `417 or Ansell `019 teach or even

suggest the embedding or combining of an advertisement with music or image data so that any time the music or image data is played the advertisement is played and so that the recipient cannot play the music or image data separately from the advertisement and cannot separate the music or image data from the advertisement.

It has also been discussed in detail herein above that none of various combinations of Parrella `764, Fenner `328, Hunter `417 and/or Ansell `019 teach or suggest the present invention as recited in claim 1 or, for that matter, in any of claims 2-7, under the requirements and provisions of either or both of 35 U.S.C. 102 or 35 U.S.C. 103.

It is therefore the belief and position of the Applicant that, for the reasons discussed in detail herein above with regard to the other rejections expressed by the Examiner, claims 5-8 are fully and patentably distinguished over and from Parrella `764, Fenner `328, Hunter `417 or Ansell `019 individually and the combination of Parrella `764 or Fenner `328 in view of Hunter `417 in view of Ansell `019 under the requirements and provisions of either or both of 35 U.S.C. 102 or 35 U.S.C. 103.

The Applicant therefore respectfully requests that the Examiner reconsider and withdraw all rejections of claims 5-8 over Parrella `764, Fenner `328, Hunter `417 or Ansell `019 individually and the combination of Parrella `764 or Fenner `328 in view of Hunter `417 in view of Ansell `019 under either or both of 35 U.S.C. 102 or 35 U.S.C. 103, and allow claims 5-8 as presented herein above.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Hunter `417, Parrella `764, Fenner `328 and/or Ansell `019 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing

or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

Michael J. Bujold, Reg. No. 32,018
Customer No. 020210
Davis & Bujold, P.L.L.C.
Fourth Floor
500 North Commercial Street
Manchester NH 03101-1151
Telephone 603-624-9220
Facsimile 603-624-9229
E-mail: patent@davisandbujold.com